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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/644,221	08/22/2000	Abha Ahuja	P1188	1420

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MONTEREY, CA 93940

EXAMINER

GECKIL, MEHMET B

ART UNIT	PAPER NUMBER
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2142

6

DATE MAILED: 03/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/644,221

Applicant(s)

AHUJA ET AL

Examiner

Mehmet B. Geckil

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. Claims 1-66 are presented for examination.

2. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to provide an adequate written description of the invention and failing to adequately teach how to make and use the invention, i.e. failing to provide an enabling disclosure.

Applicant did not teach the details of how to assign a cost to each of the routes as claimed in claims 1-66. Applicant in the specification on page 12 taught identifying a routing table with the low cost as defined by the cost function and did not teach identifying the routes. Page 11 line 14 also refers to a cost associated with a routing table and not with a route as claimed. Therefore claims lack enabling support for the claimed language. It would take undue experimentation for one of ordinary skill in the art to determine the details of how to assign a cost to each of the routes.

The examiner contends that it would require undue experimentation for one of ordinary skill in the data processing art to make and use the claimed invention for the reasons set forth hereinabove. Applicant is reminded that no new matter is allowed in the amendment to the specification under 35 U.S.C. 132 and 37 CFR 1.118(a).

3. Claims 1-66 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

4. Claims 1-66 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are indefinite because of the following :

a) Claims 1-66 are rejected under 35 U.S.C. 112, second paragraph, as being vague and indefinite for claiming assigning a cost to each of the routes because specification lacks enabling support for this feature (see First Paragraph rejection hereinabove);

b) the claim language “programming associated ...” in claims 34-66 is vague and indefinite because the nature of the association cannot be ascertained clearly.

Acceptable claim language should recite a memory embedding the programmed code and the computer system executing the programmed code to perform assigning function as well as other claimed functions; and

c) ‘...proximity of said other destinations said routing destination” in claims 8, 16, 24, 32, 41, 49, 57, and 65 is vague and indefinite. Examiner cannot determine clearly the meaning of this phrase.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-4, and 34-38, are rejected under 35 U.S.C. 102(b) as being anticipated by Mann et al.

7. Mann et al (6,314,093) taught the invention as claimed including assigning a cost to each of the routes and selecting the route with the lowest cost a defined by a cost function and propagating the selected route to a router and causing the router to route traffic from the source to the routing destination over the selected route wherein the cost is a function of path characteristics over the route to which the cost is assigned (see col 4, line 24 et seq; col 6, line 4 et seq; col 9, line 58-67 and col 10, line 1 et seq).

8. Claims 5-6, 8-14, 16-22, 24-30, 32-33, 39, 41-47, 49-55, 57-63 and 65-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mann et al in view of Kaplan et al.

9. Mann et al teachings are incorporated by reference from hereinabove in paragraph 7. Mann did not teach measuring path characteristics but Kaplan et al (6,016,307) taught all of that, e.g., a telecommunication switching system employing a multi-protocol telecommunication routing optimization which utilizes predetermined and measured parameters in accordance with a set of user priorities in determining the selection of the lowest cost telecommunication path or route (col 5, line 23 et seq) wherein predetermined parameters included maxbandwidth, reliability, economy (cost), availability and security, (TABLE A), and measurable parameters included present state, average state, data size, time and available bandwidth, and wherein the system

performed performance analysis of the route using a cost function analysis and selected routes according to cost characteristics and the like (col 3, line 29 et seq, cols 4-5, and col 7, line 24 et seq.)

10. It would have been obvious to one of ordinary skill in the networking art at the time of the invention to combine the teachings of Mann et al and Kaplan et al in order to advance Mann et al system with measurable path characteristics to input to their route finder generic engine so that a more dynamic route founding system is established by their system. Other claimed elements are all obvious variations of the well known features of traffic routing.

11. Claims 7,15,23,31,40,48,56, and 64 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mehmet Geckil whose telephone number is (703) 305-9676. The examiner can normally be reached on Monday through Friday from 6:30 A.M. to 3:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Jack Harvey, can be reached on (703) 305-9705. The fax phone numbers for the organization where this application or proceeding is assigned are listed hereinbelow.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3800/4700. Customer service number is (703) 306-5631.

Any response to this action should be mailed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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or faxed to:

(703) 872-9306

Hand-delivered responses should be brought to Crystal Park II, 2021
Crystal Drive, Arlington, VA., Fourth Floor (Receptionist).

3/25/04

**MEHMET B. GECKIL
PRIMARY EXAMINER**

Mehmet Geckil